

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

JAVIER RODRIGUEZ,

Plaintiff,

vs.

Civil No. 1:16-cv-00489

LAS CRUCES MEDICAL CENTER, LLC.,
D/B/A MOUNTAIN VIEW REGIONAL
MEDICAL CENTER, AFFILION, LLC.,
BRUCE GLEASON, M.D., PHC LAS CRUCES, INC.
D/B/A MEMORIAL MEDICAL CENTER, LAS
CRUCES EMERGENCY MEDICAL ASSOCIATES, INC,
ANDREW PEARSON, M.D., BEN ARCHER HEALTH
CENTER, INC. AND JIE LUO, M.D.¹

Defendants.

NOTICE OF REMOVAL OF ACTION

The United States of America, acting on behalf of Ben Archer Health Center, Inc., and Dr. Jie Luo, named defendants in the above- captioned action, hereby gives notice to this Court of the removal of a civil action commenced in the Third Judicial District Court, County of Dona Ana, State of New Mexico, Cause No. D-307-CV-2015-02506. This removal is pursuant to 28 U.S.C. § 2679 (d)(2) which provides that upon certification by the United States Attorney General that the defendant employee was acting within the scope of his/her employment, a civil action proceeding in state court upon such claim shall be removed to the District Court of the United States embracing the place in which the action or proceeding is pending. The United States submits the following:

¹ Dr. Jie Luo was incorrectly identified in the state court complaint as “Jiu Luo”.

1. A civil action has been brought in the Third Judicial District Court, State of New Mexico, against numerous defendants, including Ben Archer Health Center, Inc. and Jie Luo for alleged failure to properly diagnose and treat stroke, which allegedly caused Plaintiff damages (“Complaint”).

2. Defendant Ben Archer Health Center, Inc. is a grantee of the Department of Health and Human Services, which is operated by the United States of America. By operation of the Federally Supported Health Centers Assistance Act (“FSHCAA”) (42 U.S.C. § 233(g)-(n)), said Defendant is covered under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), 2671-80.

3. Filed with this Notice of Removal is Exhibit 1, a Certification by Damon P. Martinez, United States Attorney for the District of New Mexico, certifying that Defendant Jie Luo, M.D. was acting within the scope of his employment at the time of the allegations and/or incidents giving rise to this suit. The authority to certify scope of office or employment has been delegated to the United States attorney. See 28 C.F.R. § 15.4.

4. In accordance with 28 U.S.C. § 2679(d)(2), upon certification that the defendant was acting within the scope of his employment with the Government, the action commenced in New Mexico State Court shall be removed to the District Court for the District of New Mexico and such action or proceeding shall be deemed to be an action or proceeding brought against the United States.

5. The Third Judicial District Court action is properly subject to removal under 28 U.S.C. §§ 1441 (a), 1442(a)(1) and 2679(d)(2). Plaintiff asserts in his Complaint for Medical Malpractice that at all times material to the allegations, the alleged actions by Jie Luo, M.D. were

taken while he was deemed as an employee of the United States Department of Health and Human Services. Plaintiff's allegations appear to be controlled by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., and this is, therefore, an action over which the United States District Court has exclusive jurisdiction.

6. Attached to this Notice of Removal as Exhibit 2 are copies of all pleadings that have been received by and are in the possession of the United States in this action.

WHEREFORE, the United States gives notice that Cause No. D-307-CV 2015-02506 in the Third Judicial District Court for the County of Dona Ana, State of New Mexico, is removed to this Court.

Respectfully submitted,

DAMON P. MARTINEZ
United States Attorney

Electronically filed May 26, 2016
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CERTIFICATE OF SERVICE

I CERTIFY that on May 26, 2016, I served the foregoing pleading on the following non-CM/ECF Participants via first class mail, postage prepaid, addressed to:

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/s/ Erin E. Langenwalter

ERIN E. LANGENWALTER

Assistant United States Attorney